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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/643,202	08/18/2003	Kathryn W. Hatlestad	14458.01	4063

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EXAMINER

FERNSTROM, KURT

ART UNIT PAPER NUMBER

3714

DATE MAILED: 03/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/643,202	Applicant(s) HATLESTAD ET AL.	
	Examiner Kurt Fernstrom	Art Unit 3712	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 September 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6,8,9 and 12-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>9/2/04 & 9/13/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6, 8, 9 and 12-20 are rejected under 35 U.S.C. 102(b) as being anticipated by ASE Free Fall Simulators, provided by applicant as Exhibits A and B in the declaration of Don Kamis filed on September 2, 2004. Notwithstanding the statements made in the declaration, the brochures are printed publications, published more than one year before the effective filing date, and anticipate the invention. The brochures describe each of the limitations of the claims, such that one of ordinary skill in the relevant art would be able to create and use the invention.

Contrary to the assertions made in paragraph 5 of the declaration, the brochures describe throughout their pages completed conceptions of free fall simulators, rather than expressing that the contents described therein were artist's renditions of possible simulators, which ASE believed it could build. For example, in Exhibit A, at the bottom of page 2, paragraph 3.1 states that:

ASE **has conducted** an extensive evaluation of the various aspects of free fall simulation. These studies **have resulted in the most advanced designs** for free fall simulators anywhere in the world. The simulation quality of an ASE Free Fall Simulator **is** as close to actual free flight conditions as possible due to **unique designs** and considerations...

ASE Free Fall Simulators **faithfully reproduce** free flight conditions that are simply not available from any other supplier.

Emphasis added. Whatever the intentions of the publishers of the brochures may have been, one of ordinary skill in the art upon reading the brochures would understand the free fall simulators described therein to have been designed, and available, and would be able to produce the invention as claimed based on the publication.

The statements in the declaration pertaining to the dissemination of the brochures also fail to overcome the determination that they are printed publication. Mass mailings and distributions at trade shows and such are not required for such documents to be printed publications. Rather, the test for determining whether an item is a printed publication is whether the item is accessible to the public. See *In re Klopfenstein*, 72 USPQ2d 1117 (CAFC 2004), *In re Hall*, 228 USPQ 453 (CAFC 1986) and *In re Bayer*, 196 USPQ 670 (CCPA 1978). In this case, it is clear that this test has been met. By declarant's admission, the brochures were mailed out to members of the public in response to numerous requests. No steps appear to have been taken to preserve the secrecy of the contents therein, or to restrict dissemination of the brochures in any way. Even mailings to twelve, or thirty, members of the public are sufficient to make the brochures printed publications.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Hughes. Hughes discloses in Figure 1 and in the specification a free fall simulator comprising a flight chamber 4, a fan 12 positioned below the flight chamber, and a housing which

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substantially encloses the housing and which has a plurality of air intake openings 18 in the housing (nest shown in Figure 2). While it is not clear what structure is encompassed by the term "noise attenuation housing", any housing will inherently operated to attenuate noise to at least some degree.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2, 6, 8, 9, and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hughes in view of Kitchen (US 5,655,909). Hughes discloses all of the limitations of the claims with the exception of the canopy and the plurality of fans. Kitchen discloses in Figure 1 and in the specification a free fall simulator comprising a canopy 2, which extends radially about the flight chamber 4, and a plurality of fans 3, each fan located below the flight chamber and having a noise attenuation housing and air intake openings. It would have been obvious to one of ordinary skill in the relevant art to modify the device disclosed by Hughes by providing a canopy having a plurality of fans for the purpose of allowing the user to drive additional air through the flight chamber. With respect to claims 8 and 9 Figure 1 of Kitchen shows an upper wall portion above the fans and air intake ducts, extending around the canopy, to which noise attenuation housings are positioned.

Response to Arguments


Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection. Because new grounds of rejection are presented herein, this Action is made non-final.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kurt Fernstrom whose telephone number is (571) 272-4422. The examiner can normally be reached on M-F 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris Banks can be reached on (571) 272-4419. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


KURT FERNSTROM
PRIMARY EXAMINER

KF
November 18, 2004